

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 373 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

HEMANDAS NEBHANDAS

Appearance:

MR AJ DESAI, APP, for Petitioner

MR KR RAVAL for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 11/09/98

ORAL JUDGEMENT

1. State of Gujarat has preferred this appeal against the judgment and order passed by Metropolitan Magistrate, Court No.9, Ahmedabad, in Criminal Case No.2461 of 1988 on 15th February, 1990, wherein the present respondent was alleged to have committed offences punishable under Sections 506(2), 323 and 504 of Indian Penal Code.

2. The complainant lodged First Information Report on 8th November, 1988, before Naranpura Police alleging that on that day, at about 8.15 A.M., when he reached his dispensary, respondent pounced on him and gave him a slap. Thereafter, the accused-respondent gave him a push, as a result, he fell down and, thereafter, the accused held him by neck and threatened him to vacate the dispensary or else he would kill him. The accused also used abusive language. At that time, the complainant's Compounder, Haresh Shrichand Rajani and about 10 to 12 patients were present. On basis of that F.I.R., offence was registered, matter was investigated and, ultimately, having found sufficient evidence, the investigating agency filed charge sheet against the accused. When the matter came up for evidence, the accused pleaded not guilty and expressed his desire to face the trial.

3. The learned Trial Magistrate, after considering evidence adduced by the prosecution, came to a conclusion that the prosecution has failed to prove the charge against the accused and acquitted the accused of the charges.

4. Aggrieved by the said judgment and order, the State has preferred this appeal.

5. Mr. A.J. Desai, learned Additional Public Prosecutor has, vehemently, argued and assailed the judgment and has urged that the appeal may be allowed and the accused-respondent be convicted. On the other hand, Mr. Raval, learned advocate appearing for the respondent, has urged that the prosecution has not been able to prove the guilt of the accused. The prosecution has not examined the Investigating Officer and the F.I.R., therefore, cannot be said to have proved properly. The witnesses, who are examined, are interconnected and interested witnesses. Their deposition, therefore, would call for a close scrutiny. Independent witnesses, though available, have not been examined by the prosecution. The deposition of prosecution witnesses go contrary to each other so far as the sequence of offence is concerned and last, but not the least, the prosecution has not adduced any medical evidence although, according to the complainant, he had sustained an abrasion injury in knee. The conclusion of the learned Trial Magistrate is, therefore, just, legal and proper and may not be interfered with and the appeal may be dismissed.

6. This Court is taken through the relevant and material portions of the evidence by learned Additional

Public Prosecutor as well as the learned advocate for the respondent.

7. It transpires that the prosecution has not examined any independent witness, although, according to the prosecution case, there were about 10 to 12 patients awaiting arrival of the doctor at the dispensary. The Investigating Officer is also not examined and, therefore, the F.I.R., which is produced on record, at Ex.5, cannot be said to have been proved to be the F.I.R. in real sense and spirit. Further, it transpires that the sequence of events as described by the complainant-Dr. Kamal Kanaiyalal Khatwani in his deposition Ex.14 and witness-Haresh Shrichand Rajani, Ex.6 do not tally with each other. When the prosecution case is based only on the deposition of the complainant and an interested witness, it would call for a close scrutiny and such variance in the sequence of events need to be seriously considered while deciding the guilt of an accused.

8. The complainant-Dr. Kamal Khatwani says that he had sustained abrasions on right knee and right elbow. But no medical evidence is coming forward. In this regard, the evidence of Haresh Shrichand Rajani is very interesting to be noted. He says that the doctor had sustained injury only on cheek and not on other parts of the body.

9. All the above aspects are to be taken into consideration in the backdrop of the fact that, admittedly, disputes are going on between the complainant and the accused regarding the eviction and possession of the dispensary of the complainant-doctor. Keeping all these aspects in mind, the learned Magistrate has rightly not accepting the prosecution evidence. The judgment and order, therefore, cannot be said to be perverse nor can it be said that no other view except conviction of the accused is possible. This Court, therefore, refuses to interfere with the finding of the learned Trial Magistrate. The appeal is, therefore, found to be devoid of merits and is dismissed.

[A.L. DAVE, J.]

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